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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,011	06/04/2002	Timothy G. Deboer	CA920010048US1	7212
877	7590	03/12/2007	EXAMINER	
IBM CORPORATION, T.J. WATSON RESEARCH CENTER P.O. BOX 218 YORKTOWN HEIGHTS, NY 10598			KHATRI, ANIL	
		ART UNIT	PAPER NUMBER	
		2191		

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/064,011	DEBOER ET AL.
Examiner	Art Unit	
Anil Khatri	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 24 January 2007.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-25 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

Response to Amendment

1. This action is in response to the request for reconsideration filed on 1/24/07.
2. As per applicant's request claims 1, 2, 9, 15 and 21 have been amended.
3. As per applicant request claims 1-25 has been considered but they are not persuasive.
4. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Gupta et al* USPN 6,868,448 is taken with *Mann et al* USPN 6,922,722.
5. Claims 1-25 are rejected under 35 USC 101 because they disclose a claimed invention that is an abstract idea as defined in the case *In re Warmerdam*, 33, F 3d 1354, 31 USPQ 2d 1754 (Fed. Cir. 1994).

In remarks applicant argues,

- I. *Gupta* does not teach transferring to a plurality of servers packages.
- II. Combination does not teach the transmission to a server of an application and configuration data to configure the server.
- III. *Mann et al* does not teach transmitting an application or data for configuring the server to run that application.
- IV. Claim 15 is statutory.

In response to applicant arguments,

- I. It was noted that *Gupta* fairly teaches transferring to a plurality of servers packages (figures 3-5, column 6, lines 3-11 "If the local application server's configuration includes the requested

application code, the local application server satisfies the request using its existing configuration. If the local application server's configuration does not include the requested application code, the local application server (through the request handler) attempts to locate the requested application code (e.g., from another application server). When the requested application code is located, it is transferred to the local application server. The local application server retains a copy of the application code and forwards a copy to the client. Thus, if a subsequent request is made for the application code, it can be satisfied by the local application server (without accessing another application server). Therefore, examiner believes that reference discloses transferring a plurality of server packages. Thus, limitations are met by the reference.

II. It was noted that *Gupta* teaches the transmission to a server of an application and configuration data to configure the server (column 5, lines 39-45, "the local application server can be configured dynamically in response to requests for example there is no need to install application code or services on the local application server in anticipation of request, if the local application server is not configured to handle a request the local application server dynamically configures itself to satisfy the request). Therefore, examiner interprets that reference allows configuration of server as data or application transmitted. Thus, limitations are met by the reference.

III. It was noted that *Mann et al* teaches transmitting an application or data for configuring the server to run that application (figures 11-12, column 17, lines 40-46, configuration server 1140 is connected to network 1100 and contains configuration database 1142. Configuration server 1140 represents a device equipped to receive configuration requests from networked clients,

such as networked client 1110, and in response to those requests provide specific configuration data stored in a database, such as configuration database 1142.). Therefore, reference provides transmission for application or data for configuration as clients request. Thus, limitations are met by the reference.

IV. Examiner interprets that claim 15 is non-statutory because claim recites computer code for packaging files are program, per se i.e. the description or expressions of the program are not physical things nor are they statutory process as they do not act being performed. Computer programs do not define any structural and functional interrelationship between the computer program and other claimed aspect of the invention, which permits the computer program's functionality, could be realized. Therefore, computer program is merely a set of instructions capable of being executed by a computer; the computer program itself is not a process.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-25 are rejected under 35 USC 101 because they disclose a claimed invention that is an abstract idea as defined in the case *In re Warmerdam*, 33, F 3d 1354, 31 USPQ 2d 1754 (Fed. Cir. 1994).

Analysis: Claims 1-26 disclosed by the applicant as being a “method for executing an application...”. Since the claims are each a series of steps to be performed on a computer the processes must be analyzed to determine whether they are statutory under 35 USC 101.

Examiner interprets that claims 1-25 are non-statutory because claim recites transferring to each plurality of server package, configuring each server and executing servers and application does not produce a concrete and tangible results so its functionality can be realized. Therefore, claims 1-25 are non-statutory and rejected under 35 USC 101.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anil Khatri whose telephone number is 571-272-3725. The examiner can normally be reached on M-F 8:30-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



ANIL KHATRI
PRIMARY EXAMINER